



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 100**

### **Docket Number USCG-2016-0385]**

### **RIN 1625-AA08**

### **Special Local Regulation; Tri-City Water Follies Spring Testing, Kennewick, WA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary interim rule; request for comments.

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**SUMMARY:** The Coast Guard is establishing a Special Local Regulation for all navigable waters within the Columbia River in the vicinity of Columbia Park, commencing at the Interstate 395 Bridge and continuing up river approximately 2.0 miles and terminating at the northern end of Wade Island, during the Tri-City Water Follies Spring Testing event. The special local regulation is needed to protect personnel, vessels, and the marine environment from potential hazards created by high-speed watercraft. Entry of vessels or persons into this area is prohibited unless specifically authorized by the Captain of the Port Columbia River or his designated representative.

**DATES:** This rule is effective from June 3, 2016 through June 10, 2016 at 6 p.m. This rule will be enforced from June 10, 2016 at 7 a.m. through June 10, 2016 at 6 p.m.

Comments and related material must be received by the Coast Guard on or before July 5, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket,

go to <http://www.regulations.gov>, type USCG-2016-0385 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule. You may submit comments identified by docket number USCG-2016-0385 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Kenneth Lawrenson, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503-240-9319, email [msupdxwwm@uscg.mil](mailto:msupdxwwm@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a Notice of Proposed Rulemaking (NPRM) with respect to this rule because to do so would be impracticable. The NPRM process

would be contrary to public interest in this situation due to the extremely hazardous conditions this event could potentially pose if held without an enforceable special local regulation area. Furthermore, the event staff submitted the application for marine event on March 18, 2016, limiting the Coast Guard to two months to complete an NPRM and full comment period, which is the main factor in our decision to forego the NPRM process.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date until 30 days after publication would be impracticable, for the reasons stated above.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Columbia River (COTP) has determined that potential hazards associated with high-speed watercraft will be a safety concern for anyone within Columbia River mile 330 and 332 during the event hours. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the special local regulation area during the event hours.

### **IV. Discussion of the Rule**

This rule establishes a special local regulation area from 7 a.m. to 6 p.m. on June 10, 2016. The special local regulation area will cover all navigable waters within the Columbia River in the vicinity of Columbia Park, commencing at the Interstate 395 Bridge and continuing up river approximately 2.0 miles and terminating at the northern end of Wade Island. The duration of the

special local regulation area is intended to protect personnel, vessels, and the marine environment in these navigable waters for the entirety of the Tri-City Water Follies Spring Testing event. No vessel or person will be permitted to enter the special local regulation area specified in this rule without obtaining permission from the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration. The special local regulation for the Tri-City Water Follies Test event will only be effective from 7 a.m. to 6 p.m. on the date of the test event. Furthermore, the Tri-City Water Follies Test event is directly related to the main Tri-City Water Follies Hydroplane racing event which has occurred annually for the last 50 years and is extremely well received in the Kennewick-Pasco-Richland metropolitan area. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the special local regulation area and the rule allows vessels to seek permission from the COTP or his designated representative to enter the area.

## B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule

elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a Special Local Regulation for a limited access area lasting less than 12 hours that will prohibit vessels from entering an area encompassing Columbia River mile 330 and 332 unless given permission to do so by the Captain of the Port Columbia River or his designated representative. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements,

Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—REGATTAS AND MARINE PARADES

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

2. Add § 100.T13-0385 to read as follows:

**§ 100.T13-0385 Special Local Regulation; Tri-City Water Follies Spring Testing, Kennewick, WA.**

(a) *Regulated area.* The following is designated as a special local regulation area:

(1) *Location.* The special local regulation area covered by this rule will cover all navigable waters within the Columbia River in the vicinity of Columbia Park, commencing at the Interstate 395 Bridge and continuing up river approximately 2.0 miles and terminating at the northern end of Wade Island.

(2) *Enforcement period.* This special local regulation area is in effect on June 10, 2016 from 7 a.m. to 6 p.m. The rule will be enforced for the duration of the Tri-City Water Follies Spring Testing event. The Coast Guard will inform mariners of any change to this period of enforcement via Broadcast Notice to Mariners.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 100, to enter, transit through, anchor in, or remain within the special local regulation area is prohibited unless permission has been authorized by the Captain of the Port or his designated representative.

- (1) The following applies to the special local regulation area identified in paragraph (a)(1)



of this section.

(i) This special local regulation area is designed to restrict vessel traffic, including all non-motorized vessels, except as may be permitted by the Captain of the Port Columbia River or his designated representative.

(ii) Within this area all vessels will transit at the minimum speed necessary to maintain headway without creating a wake.

(iii) A succession of sharp, short signals by whistle, siren, or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the patrol vessel personnel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(2) [Reserved]

(c) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. 70118. In addition, the Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this section.

Dated: May 25, 2016.

<NAME>D. J. Travers,  
<TITLE>Captain, U.S. Coast Guard,  
Captain of the Port,  
Sector Columbia River.

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